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CASE NO. A21-660

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IN THE NEBRASKA COURT OF APPEALS

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STATE OF NEBRASKA, Plaintiff/Appellee,

v.

EIGHTEEN THOUSAND DOLLARS U.S. CURRENCY, Defendant

CHRISTOPHER BOULDIN, Appellant

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ON APPEAL FROM THE DISTRICT COURT OF SEWARD COUNTY, NEBRASKA

THE HONORABLE JAMES STECKER PRESIDING

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APPELLANT'S BRIEF

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Prepared and Submitted by:  
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#### CASES CITED

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#### STATUTES CITED

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| <u>Neb. Rev. Stat. §28-431</u> ..... | 4,5,6,8 |
|--------------------------------------|---------|

## BASIS FOR APPELLATE JURISDICTION

Christopher Bouldin, (hereinafter, "Appellant"), appeals from the judgment of the Seward County District Court which forfeited his \$18,000.00 in U.S. Currency pursuant to Neb. Rev. Stat. §28-431. Forfeiture proceedings brought pursuant to this section are not in rem proceedings, but are criminal proceedings entitled to double jeopardy protection. State v. Franco, 257 Neb. 15, 594 N.W.2d 633 (1999). Appellate review concerning the sufficiency of the evidence to forfeit .... under this section should not be treated differently than review of the sufficiency of evidence in a criminal case. State v. One 1985 Mercedes 190D Automobile, 247 Neb. 335, 526 N.W.2d 657 (1995).

- A. Judgments and orders to be reviewed include the Court's July 14, 2021 Order.
- B. No motions have been filed which toll the time within which to appeal.
- C. On August 6, 2021, Appellant timely filed a notice of appeal and the required docket fee.
- D. This is not an interlocutory appeal.

## STATEMENT OF THE CASE

### Nature of the Case

On August 7, 2020, a Complaint was filed in the District Court of Seward County, Nebraska seeking to forfeit \$18,000.00 in U.S. currency pursuant to Neb. Rev. Stat. §28-431.

### Issue in the District Court

The issue before the District Court was whether there was sufficiency of evidence to forfeit the \$18,000.00 in U.S. Currency pursuant to Neb. Rev. Stat. §28-431.

### How the Issues were Decided

On July 14, 2021, the District Court entered an order forfeiting the \$18,000.00 in U.S. Currency under Neb. Rev. Stat. §28-431 by finding by clear and convincing evidence that said currency was used, or intended to be used, to facilitate a violation of the Uniform Controlled Substances Act.

### Scope of Review

The scope of review in a criminal appeal is limited to the errors assigned and discussed in the Appellant's brief and the appellate court's right to note plain error appearing on the record. State v. Paul, 256 Neb. 669, 677 (1999).

## ASSIGNMENTS OF ERROR

### I.

The District Court incorrectly applied the “clear and convincing standard” instead of the “beyond a reasonable doubt standard” as required by Neb. Rev. Stat. §28-431.

### II.

There is not sufficient evidence under Neb. Rev. Stat. §28-431 to forfeit the currency in question.

## PROPOSITIONS OF LAW

### I.

Forfeiture actions pursuant to this section are criminal in character and double jeopardy principles apply. State v. Spotts, 257 Neb. 44, 595 N.W.2d 259 (1999).

### II.

Forfeitures of property under this section are considered punitive and criminal in nature because property forfeited under this section is not contraband per se, but rather ordinary, legal items used to facilitate illegal drug transactions. Appellate review of the sufficiency of the evidence to support a forfeiture of a motor vehicle under this section is to be treated the same as the review of the sufficiency of the evidence in the appeal of a criminal case. State v. \$3,067.65 in U.S. Currency, 4 Neb. App. 443, 545 N.W.2d 129 (1996).

Subsection (4) of this section (28-431) requires the State to prove beyond a reasonable doubt that seized property was used in violation of Chapter 28, article 4. State v. 1987 Jeep Wagoneer, 241 Neb. 397, 488 N.W.2d 546 (1992).

### STATEMENT OF THE FACTS

On August 1, 2020, Christopher Bouldin was the subject of a traffic stop for following too close and by driving a rented vehicle. (9:1-10:1). Bouldin told the officer that he was traveling to the Denver and/or Fort Collins, Colorado area. (15:2). Once the traffic stop was initiated and officers had Bouldin in their patrol vehicle, officer decided to detain Bouldin. According to the officer the detainment was due to the fact that Bouldin had a radar detector in his rental vehicle, that he had beverages in a cooler in the vehicle, that he had a dog with him, that his travel plans initially included a friend who had COVID-19, that his dog did not appear to be a hiking dog, that he had some prior criminal history, that he was out of work, that he was going to Colorado where marijuana is sold and that he was going to return to his home in Richmond, Virginia which is a large city. (17:6-18:24). After 15 minutes a service canine was brought to the scene which alerted to illegal narcotics. (20:15-20:22). Law enforcement searched the vehicle and found \$18,000.00 in cash, some vacuum seal bags and a disinfectant spray bottle. (21:6-14). Bouldin informed the officers that he earned the money and that the bags were for food. (22:4-11).

The Court found by clear and convincing evidence that said currency

was used, or intended to be used, to facilitate a violation of the Uniform Controlled Substances Act and ordered the currency forfeited.

## SUMMARY OF ARGUMENTS

Appellant urges this Court to find that the District Court erred in applying the clear and convincing standard rather than the beyond a reasonable doubt standard as required by Neb. Rev. Stat. §28-431. There was not sufficient evidence to find that the currency was used, or intended to be used, to facilitate a violation of the Uniform Controlled Substances Act.

## ARGUMENT

THE DISTRICT COURT OF SEWARD COUNTY, NEBRASKA, ERRED BY APPLYING THE CLEAR AND CONVINCING STANDARD RATHER THAN THE BEYOND A REASONABLE DOUBT STANDARD AND THERE WAS NO PROOF BEYOND A REASONABLE DOUBT THAT THE CURRENCY WAS USED, OR INTENDED TO BE USED, TO FACILITATE A VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT.

The District Court applied the wrong standard in determining that the currency at hand should be forfeited. Subsection (4) of this section (28-431) requires the State to prove beyond a reasonable doubt that seized property was used in violation of Chapter 28, article 4. State v. 1987 Jeep Wagoneer, 241 Neb. 397, 488 N.W.2d 546 (1992). The reasoning behind the reasonable doubt standard is that the legislature intended forfeiture proceedings under 28-430 to be criminal in nature. State v. Franco, 594 N.W.2d 633 (1999). The standard in criminal cases is beyond a reasonable doubt, not clear and convincing. The State must prove beyond a reasonable doubt every element of the charged offense. In re Winship, 397 U.S. 358 (1970).



The Court determined after a trial that the burden met was clear and convincing, not beyond a reasonable doubt. If the evidence had supported the finding of beyond a reasonable doubt, certainly the Court could have found the evidence met that burden. However, the Court did not find that the evidence in the case at hand met the higher burden, very possibly because it simply did not.

#### CONCLUSION

The District Court erred in using the clear and convincing rather than the beyond a reasonable doubt standard in its order to forfeit the \$18,000.00 in U.S. currency. Furthermore, there is not sufficient evidence to support a finding that the currency should have been forfeited. Appellant would respectfully request that this Court overrule the Order of the District Court and Order that the currency be returned to Appellant.

Respectfully Submitted,

**Christopher Bouldin**, Appellant

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# Certificate of Service

I hereby certify that on Wednesday, December 29, 2021 I provided a true and correct copy of this *Brief of Appellant Bouldin* to the following:

One \$18,000.00 in US Currency (Self Represented Litigant) service method: **No Service**

State of Nebraska represented by Lory Ann Pasold (20467) service method: Electronic Service to **lpasold@co.seward.ne.us**

Signature: /s/ Bradley Sipp (23970)